

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

CLERK'S MINUTES

BEFORE DISTRICT JUDGE JAMES O. BROWNING (IN LAS CRUCES)

CASE No.: No. CR 15-4268 JB **DATES:** March 12-16, 2018

CASE CAPTION: *USA v. DeLeon, et al.*

CRD: C. Bevel **COURT REPORTER:** J. Bean

COURT IN SESSION: **3/12/18**
9:00am-10:30am 1.5 hr
1:19pm-5:33pm 4 hr 15 min
3/13/18
8:36am-11:36am 3 hr
12:45pm-5:31pm 4 hr 46 min
3/14/18
8:29am-11:47am 3 hr 22 min
1:00pm-5:32pm 4 hr 32 min
3/15/18
8:34am-12:01pm 3 hr 33 min
1:02pm-5:49pm 4 hr 51 min
3/16/18
8:30am-1:31pm 5 hr 1 min
2:37pm-5:30pm 3 hr
38 hr 48 min

TYPE OF PROCEEDING: Motions Hearing (see below)/Pretrial Conference

COURT'S RULING/DISPOSITION:

PRETRIAL CONFERENCE

1. United States' Notice of Proposed James Statements for Trial 2 [1903] –
2. Motion to Prevent the Admission of Statements of Non-Testifying CoDefendants Implicating Defendant Billy Garcia and for an Order for the Government to Specify Such Statements Prior to Trial [1307] –
3. Non-Party Leroy Lucero's Motion to Quash Subpoena and Request for Expedited Consideration [1900] –
4. Opposed Second Motion by Andrew Gallegos to Sever Counts Four and Five [1298] –
5. Motion to Sever Counts Based on Practical Grounds [1743] -
6. Defendant Shauna Gutierrez' Opposed Motion for a James Hearing [1320] –
7. Defendant Joe Gallegos' Motion for a Bill of Particulars [1143] –
8. Defendant Joe Gallegos' Motion for a Bill of Particulars as to Counts 13-16 [1319] –
9. Defendant Gallegos Motion to Renew Motion to Dismiss Counts 4 and 5 (PreIndictment Delay) and Motion for a Bill of Particulars as to Counts 13 Through 16 [1808] –

10. Motion for Immediate Production of All Remaining Materials in the Government's Possession Regarding Trial Two Witnesses [1693] -
11. Motion for Production of Brady, Giglio or Jencks Materials Contained In Presentence Report or Cooperating Witnesses, or, in the Alternative, *In Camera* Review [1694] -
12. Motion for Immediate Discovery [1744] -
13. Motion for Discovery of the Arrest and Conviction Reports of Witnesses' Criminal History [1859] -
14. Motion for Immediate Production of Notes of Interviews of Witnesses by Investigating Officers, Substantially Verbatim or Exculpatory Notes of Interviews of Witnesses by the Prosecutors, for Production of Recorded Interviews and for Disclosure of Evidence That Any Notes Have Been Destroyed [1861] -
15. ALREADY HEARD 5/9/17 - [1061] -
16. Motion to Exclude Testimony From Government's Gang Experts as Outlined in the United States' Supplemental Notice of Gang Expert Witnesses' Testimony (Doc. No. 1656) [1671] -
17. Motion for the Imposition of a January 31, 2018 Deadline for the Government to Produce a Summary of Statements It Intends to Offer Against Trial Two Defendants [1670] -
18. Motion to Suppress and Statements [1142] -
19. Motion in Limine Regarding Alleged Bad Acts [1308] -
20. Motion in Limine Regarding Alleged Bad Acts [1504] -
21. Motion in Limine Regarding Alleged Bad Acts [1528] -
22. Motion in Limine Regarding Alleged Bad Acts [1531] -
23. Motion in Limine Regarding Alleged Bad Acts [1532] -
24. Defendant Joe Gallegos' Motion in Limine to Prohibit Government From Introducing Evidence of Alleged "Bad Acts" [1602] -
25. Motion to Dismiss [1283] -
26. Defendant Edward Troup's Motion to Dismiss (PreIndictment Delay) [1284] -
27. Gallegos Defendant's Motion to Dismiss (PreIndictment Delay) [1318] -
28. Defendant Edward Troup and Billy Garcia's Motion for Production of Alleged Co-Conspirators Statements and for Pre-Trial Hearing on Their Admissibility [1292] -
29. Motion for James Hearing and Determination of Co-Conspirator Statements Admissibility at a Pre-Trial Hearing [1317] -
30. United States' Motion in Limine to Exclude Extrinsic Evidence in Violation of Federal Rule of Evidence 403 [1754] -
31. United States' Motion in Limine to Preclude Cross-Examination of Special Agent Acee on Unrelated Conduct [1871]
32. Emergency MOTION to Quash Writ and Request to file Motion sealed and for Telephonic hearing by Fred Quintana [1919]
33. Opposed Motion for Order to Obtain Physical and Mental Health Records [1908]
34. Motion to Quash Non-Party Leroy Lucero's Motion to Quash Subpoena and Request for Expedited Consideration by Leroy Lucero [1900]

ORDER CONSISTENT WITH COURT'S RULING TO BE PREPARED BY: Court

ATTORNEYS PRESENT FOR PLAINTIFF(S):

ATTORNEYS PRESENT FOR DEFENDANT(S):

Maria Armijo/Randy Castellano/
Matthew Beck, AUSAs

Brock Benjamin (for Deft. Joe Lawrence Gallegos)

Cori Harbour-Valdez/Patrick Burke (for Deft. Edward Troup)

Robert Cooper/James Castle (for Deft. Billy Garcia)

Jeff Lahann/Joseph Shattuck (for Deft. Allen Patterson)

John Granberg/Edward Solis (for Deft. Christopher Chavez)

Billy Blackburn (for Deft. Arturo Arnulfo Garcia)

Richard Jewkes/Amy Jacks (for Deft. Daniel Sanchez)

Marc Lowry/Theresa Duncan (for Deft. Anthony Ray Baca)

William Maynard/Carrie Bhalla (for Deft. Carlos Herrera)

Ryan Villa/Justine Fox-Young (for Deft. Rudy Perez)

Donovan Roberts/Lisa Torracco (for Deft. Andrew Gallegos)

Angela Arellanes (for Deft. Shauna Gutierrez)

Jerry Walz (for Deft. Brandy Rodriguez)

Gregg Fallick (for witness Leroy Lucero)

COURT: Calls case. Counsel enter appearances. *FBI Special Case Agent Brian Acee present. Cynthia Gilbert, paralegal, present for defense teams.*

COURT IN SESSION:

9:00am Court addresses counsel regarding upcoming trial scheduled to begin April 9. Currently scheduled for 6-8 weeks. Court will proceed to Pretrial conference related to Trial 2.
Court addresses counsel regarding Trial 2.

9:00am Unites States requests closing arguments after instructions to jury.

9:00am Court addresses elements and giving preliminary instruction, listing counts.
Unites States requests preliminary elements instruction.

9:13am Mr. Cooper requests holding off until he has an opportunity to review/discuss elements

instruction. Court provides copy of elements instruction to counsel.

- 9:14am Mr. Castle addresses court regarding follow up questions after voir dire.
- 9:15am Court addresses counsel regarding alternate jurors, court suggests 18 jurors (6 alternates).
- 9:16am Ms. Armijo request all jurors including alternates remain under charge, defendants agree.
- 9:17am Court addresses counsel regarding day to day schedule for trial. Court inclined to start at 8:30. Trial could be here in Las Cruces or in Albuquerque.
- 9:20am Court addresses counsel regarding opening statements; Ms. Armijo requests 1 hour.
- 9:21am Mr. Burke requests 45 minutes, opening at the beginning.
Mr. Shattuck request 45 minutes opening at the beginning.
Mr. Granberg 30-45 minutes at beginning.
Mr. Blackburn 45 minutes at beginning
Mr. Roberts 30-40 minutes at beginning
Ms. Arellanes 30-45 minutes at beginning.
Ms. Armijo requests exhibits used in opening statements presented by power point.
Mr. Castle objects.
- 9:27am Court indicates exhibits should be shared, power points related to opening statements do not have to be shared.
- 9:28am Court addresses counsel regarding time for voir dire. Ms. Harbour-Valdez requests 1 hour, Mr. Cooper requests 1 hour, Mr. Shattuck, Mr. Lahann, 1 hour, Mr. Granberg requests 1 hour Court indicates preference is to keep it to 55 minutes. Mr. Blackburn requests 55 minutes. Mr. Roberts 42 minutes. Ms. Arellanes requests 40 minutes. Ms. Armijo requests use of numbers rather identification by juror name.
- 9:37am Mr. Cooper request court use names rather numbers.
- 9:37am First round of questionnaires were sent out to counsel on Friday. Ms. Armijo indicates the government did not receive them. Court will check on status.
- 9:42am Mr. Roberts addresses court regarding being able to see through the privacy covers on tables. Court indicates many checks will be made before start of next trial. Court indicates United States gets numbered exhibits, defendants get letters.
- 9:45am Mr. Castle addresses court regarding additional preemptory challenges and seating arrangements. Mr. Castle request separate tables so that counsel can consult with their respective clients.
- 9:51am Court will take concerns into consideration. Current numbers and logistics will require 2

tables whether in Las Cruces or Albuquerque.

- 9:52am Mr. Burke addresses court regarding severance, and need for separate tables for defendants; addresses Document 1626 regarding firm date for objections.
- 9:54am Ms. Harbour-Valdez request government provide may call and will call witness lists by March 26.
- 9:54am Ms. Armijo indicates reciprocal witness list by March 23.
- 9:55am Court will have government's list for will call list by March 23. Defendant's to do the same, but may need to be revised after receipt of government's list.
- 9:57am Mr. Blackburn agrees need for separate tables.
- 10:00am Mr. Castle agrees, to need for separate tables.
- 10:03am Mr. Benjamin addresses Court regarding location of trial and time of courtroom open to
- 10:04am Mr. Cooper addresses court regarding subpoena of witness' Jim Moore, Cheryl Lackey requests to appear telephonically and Reeve Swainston.
- 10:04am No objection by defendants or United States.
- 10:05am Court will allow telephonic testimony.
- 10:08am Court moves to Motion hearings; Document 1903 – United States' Notice of Proposed James Statements for Trial 2.
- 10:08am Mr. Castellano responds. Governments' exhibits 11-18 plea agreements of defendants having pled guilty.
- 11-Leonard Lujan
- 12-Benjamin Clark
- 13-Ruben Hernandez
- 14-Javier Alonzo
- 15-Eugne Martinez
- 16-Paul Rivera
- 17-brandi Rodriguez
- 18-Santos Gonzales
- Mr. Castellano moves to admit for purpose of James hearing only.
- 10:13am Mr. Castle objects to admission.
- 10:14am Mr. Castellano indicates 16 defendants will testify, agreements were signed under oath.
- 10:16am Mr. Benjamin, Mr. Burke, Ms. Arellanes, Mr. Solis join in objection.
- 10:17am Court admits exhibits 11-18 for purposes of this hearing.
- 10:19am Mr. Benjamin addresses court regarding document 1918 filed last night.
- 10:22am Mr. Castellano requests Monday, March 26th regarding use of any testimony from first

trial of any additional statements to be used in Trial 2.

10:24am Mr. Benjamin continues to object.

10:26am Mr. Burke objects.

10:28am Court imposes Wednesday end of business day to submit by letter or pleading identifying additional statements.

10:31 Court in recess.

10:54am *TRIAL 1 Counsel released after verdicts returned.*

1:19pm Court in session.

1:19pm Mr. Burke addresses court regarding exhibits 1-18 plea agreements. Request addendum be attached.

1:19pm Court will have addendum attached to plea agreements exhibits 1-18.

1:20pm Ms. Torracco addresses court regarding statements offered in trial 1, objects.

1:25pm Court will focus on James statements.

1:26pm Mr. Castle responds.

1:28pm Mr. Beck addresses court regarding identification of statements.

1:30pm Mr. Castle responds requests as many pretrial rulings as possible from the Court to avoid any unnecessary delays during Trial 2.

1:33pm Court addresses Mr. Castellano regarding establishing conspiracies and who is alleged to have participated.

1:33pm Mr. Castellano responds, provides Indictment information reference to each conspiracy.

2:06pm Court indicates there are six conspiracies,

2:09pm Witness Nancy Stemo sworn.

2:10pm Mr. Benjamin begins direct examination witness Ms. Stemo.

2:26pm Mr. Castle addresses Court regarding potential James hearing statements.

2:30pm Mr. Beck addresses Court with proposed schedule of James hearing provided via email on 3/9 @ 1:13pm

2:40pm Mr. Castle responds.

2:48pm Court in recess.

3:08pm Court in session.

3:08pm Court addresses Mr. Beck regarding assurance that they do not intend to elicit any other statements other than what is in discovery.

3:09pm Mr. Beck responds and agrees.

3:13pm Mr. Castle responds.

3:13pm Mr. Burke addresses court regarding new or recalled information being disclosed or

defendant being present during pretrial interviews.

3:14pm Mr. Beck responds, objects to defendants' presence at pretrial interviews. Court will not order defendants to be present during pretrial interviews.

3:18pm Court addresses counsel regarding motions to dismiss.

3:28pm Mr. Beck responds regarding AUSAs anticipated testimony. (AUSAs James Braun and Reeve Swainston)

3:35pm Mr. Castle responds on the court's thoughts on motions to dismiss.

3:51pm Mr. Benjamin address Court.

3:53pm Mr. Beck responds.

3:58pm Mr. Burke responds.

4:00pm Court will not preclude defendants from calling AUSAs. They will not be called until end of evidence on Motions to Dismiss.

4:01pm Court will take up Doc. 1298, court not inclined to sever defendants.

4:03pm Ms. Torraco presents arguments on Doc. 1298. Motion to Sever Andrew Gallegos.

4:11pm Court responds to Ms. Torraco.

4:12pm Ms. Torraco continues with arguments.

4:30pm Ms. Torraco requests decision be held in abeyance until James hearings are complete.

4:30pm Ms. Armijo responds.

4:39pm Mr. Beck responds to Court.

4:47pm Court in recess.

5:05pm Court in session.

5:05pm Ms. Armijo addresses court requesting court deny severance.

5:08pm Mr. Castle addresses Court regarding Bruton statements.

5:23pm Ms. Torraco requests court review Gallo case before rendering a decision.

5:29pm Court will orally deny the motion to Sever at this time. Mr. Garcia's Motion Doc. 1743 will be addressed tomorrow.

5:31pm Mr. Castle indicates he rests on motion submitted (Doc. 1743); request focus on James hearings, motions to dismiss and individual statements.

5:32pm Mr. Benjamin indicates James hearing and Bill of Particulars.

5:32pm Court will resume at 8:30am.

5:33pm Court in recess.

DAY 2: 3/13/18

8:36am Court in session.

8:36am Mr. Grandburg addresses Court regarding Motion for Severance.

8:39am Mr. Burke joins and agrees with defense comments on motions to sever.

8:40am Court denies motion to sever without prejudice.

8:41am Mr. Castellano conducts direct examination of witness Agent Stemo, previously sworn.

8:42am Court addresses Mr. Benjamin regarding responses filed.

8:42am Mr. Shattuck joins in other responses regarding James hearing.

8:43am Court clarifies responses filed by defendants.

8:48am Mr. Castellano continues with direct examination of witness Agent Stemo.

9:52am Mr. Benjamin conducts cross examination of witness Agent Stemo.

10:03am Court in recess.

10:20am Court in session.

10:20am Mr. Benjamin

11:36am Court in recess.

12:45pm Court in session.

12:45pm Mr. Burke conducts cross examination of witness Agent Stemo.

1:20pm Mr. Castle conducts cross examination of witness Agent Stemo.

2:15pm Court in recess.

2:31pm Court in session.

2:31pm Mr. Granburg conducts cross examination of witness Agent Stemo.

2:45pm Mr. Blackburn conducts cross examination of witness Agent Stemo.

3:13pm Mr. Cooper addresses Court, invokes the rule regarding witnesses.

3:14pm Court: witnesses may not discuss testimony with each other. Witnesses are required to remain outside courtroom.

3:14pm Ms. Torracco conducts cross examination witness of Agent Stemo.

3:55pm Ms. Arellanes conducts cross examination of witness Agent Stemo.

4:01pm Court in recess.

4:19pm Court in session.

4:19pm Ms. Arellanes continues with cross examination of witness Agent Stemo.

4:43pm Mr. Castellano conducts re-direct with witness Agent Stemo.

4:48pm Mr. Benjamin conducts re-cross examination of witness Agent Stemo.

4:54pm Mr. Burke conducts re-cross examination of witness Agent Stemo.

4:55pm Court excuses witness Agent Stemo.

4:55pm Mr. Castle addresses court, defendants have no witnesses for James hearings.

4:55pm Court addresses counsel regarding chart for rulings on James hearings.

4:58pm Mr. Castellano addresses court regarding 2017 Alcorta case he wishes to add that the

court review.

4:59pm Court will provide a chart with ruling as the week proceeds. Court will next take up next Motions for Bill of Particulars Doc. 1320.

5:00pm Ms. Arellanes addresses Court regarding Doc. 1320 Motion for Bill of Particulars.

5:05pm Mr. Castellano responds.

5:08pm Court denies Motion for Bill of Particulars Doc. 1320.

5:09pm Court addresses Mr. Benjamin regarding Motion for Bill of Particulars Doc. 1143, 1319, 1808.

5:10pm Mr. Benjamin addresses court with argument on Motions for Bill of Particulars.

5:29pm Ms. Torracco addresses court.

5:31pm Court will address this matter in the morning.

5:31pm Court in recess.

DAY 3: 3/14/18

8:29am Court in session.

8:29am Court addresses counsel regarding Bill of Particulars yesterday.

8:33am Ms. Torracco has nothing further regarding Bill of Particular.

8:34am Mr. Burke addresses Court regarding severance.

8:37am Mr. Blackburn addresses court regarding severance, joins Mr. Burke's argument.

8:40am Ms. Armijo responds.

9:04am Mr. Benjamin addresses Ms. Armijo and the court regarding Bill of Particulars.

9:05am Ms. Armijo continues with arguments on Bill of Particulars.

9:27am Mr. Benjamin moves to admit Exhibit A, for Defendant Joe Gallegos.

9:27am Court admits exhibit A.

9:30am Mr. Castle addresses Court.

9:32am Ms. Arellanes joins in motion to sever counts 4 and 5.

9:32am Court will likely deny the Motion for Bill of Particulars.

9:32am Mr. Benjamin argues motion to court.

9:35am Mr. Castle argues motion regarding bifurcation.

9:41am Mr. Solis addresses Court and joins in Mr. Castles request for bifurcation.

9:44am Mr. Lahann addresses Court argues and joins in request for bifurcation/severance.

9:46am Court addresses counsel regarding Bill of Particulars, Doc. 1143 motion is denied. Court is not ruling on severance, admissibility of evidence at this time.

9:49am Mr. Benjamin addresses court with Motion for Bill of Particulars on counts 13-16, Doc. 1319.

9:56am Ms. Armijo responds.

10:01am Court in recess.

10:19am Court in session.

10:19am Ms. Armijo addresses court

10:21am Mr. Cooper addresses Court regarding Gregg Fallick's motion to quash telephonically today at 1pm.

10:21am Ms. Armijo addresses Court regarding all pending Motions to Quash.

10:23am Mr. Cooper addresses court regarding Mr. Sapien's availability and addressing Motions to Quash.

10:26am Court will hearing Doc.1900 at 1:00pm

10:28am Mr. Castle addresses Court regarding Defendant Billy Garcia Motion Doc. 1693.

10:36am Court addresses counsel.

10:42am Mr. Beck responds.

10:51am Mr. Castle responds.

10:58am Court clarifies with counsel on redactions for PSRs related to witnesses for Trial 2.

11:01am Ms. Armijo will reach out to US Probation regarding outstanding PSRs.

11:07am Mr. Burke addresses court regarding PSRs to be disclosed. Requests drafts of PSRs as they exist. Requests a court order providing whatever drafts are available.

11:10am Court requests a letter and draft order from defendants regarding providing draft PSRs.

11:11am Mr. Castle addresses court regarding Agent Acee's notes being disclosed.

11:11am Mr. Beck responds.

11:23am Court has Ms. Bean explain status of transcripts of Trial 1, final approvals and status.

11:28am Mr. Burke addresses court regarding Doc. 1061 requests paralegal to paralegal communication requesting transcript of Clark 302, Leroy Lucero interview/transcript. DNA documents requested of Ms. Armijo.

11:33am Mr. Beck responds, information has been requested and will be provided as soon as possible. Counsel to work together to obtain information.

11:34am Ms. Armijo indicates information has been requested regarding DNA.
Court indicates Mr. Burke can renew Motion to compel if information is not received.

11:35am Mr. Castle addresses court with arguments on Doc. 1744. Clarifies which requests remain outstanding.

11:39am Mr. Beck responds.

11:47am Court in recess.

1:00pm Court in session.

1:00pm Mr. Fallick's addresses court telephonically regarding Motion to Quash Subpoena Doc. 1900.

1:02pm Court addresses Mr. Fallick.

1:13pm Mr. Fallick responds, argues Motion to Quash.

1:19pm Mr. Castle responds, references James statements in chart attributable to Mr. Lucero.

1:29pm Mr. Burke responds, references James statements in chart attributable to Mr. Lucero.

1:30pm Mr. Benjamin responds, references James statements in chart Doc. 1903 Table, attributable to Mr. Lucero.

1:32pm Mr. Solis responds.

1:33pm Mr. Beck indicates Mr. Lucero will be called at trial, request quashing all subpoenas for this week's hearings.

1:38pm Mr. Castle responds.

1:46pm Mr. Beck responds.

1:50pm Mr. Burke responds.

2:00pm Mr. Fallick responds.

2:06pm Court will permit defendant to call Mr. Lucero for limited purpose. Motion Denied. Mr. Fallick to coordinate with Mr. Lucero's probation officer on coordination of travel for Trial.

2:09pm Mr. Fallick requests advance funds, requests Friday afternoon 1pm.

2:10pm Mr. Beck indicates two US Attorneys are scheduled to testify Friday afternoon.

2:12pm Mr. Fallick requests counsel to provide documents relevant to Mr. Lucero.

2:13pm Court directs defendants put a package of documents, 302s together Mr. Fallick.

2:15pm Mr. Castle requests transcript of release hearing as requested in Doc. 1907.

2:16pm Court will grant motion Doc. 1907.

2:17pm Mr. Beck has no position on releasing transcript.

2:17pm Court will have transcript of 3/26/16 hearing ready for Mr. Fallick to pick up in Albuquerque courthouse.

2:23pm Court concludes hearing with Mr. Fallick.

2:23pm Mr. Castle continues with Doc. 1744 – Discovery requests.

2:30pm Mr. Beck responds.

2:30pm Court could provide order to require facilities to turn over calls.

2:32pm Court in recess.

2:49pm Court in session.

2:49pm Court addresses Mr. Sapien, witness Fred Quintana (present) reference Emergency

MOTION to Quash *Writ and Request to file Motion sealed and for Telephonic hearing* by Fred Quintana Sealed Motion to Quash Doc. 1919.

2:51pm Mr. Sapien addresses court, requests quashing subpoena.

3:08pm Mr. Cooper responds, requests resetting matter so that Mr. Sapien can meet with Fred Quintana and be present for hearing.

3:12pm Court authorizes, without objection of all counsel, Doc. 1909 to be provided to Mr. Sapien (only what is related to his client Fred Quintana). Copy of discovery related to statement also to be provided to Mr. Sapien.

3:14pm Ms. Armijo responds, request subpoena be quashed.

3:15pm Court indicates motion properly filed, properly served. Court will allow limited and targeted evidence regarding statements made. Motion denied. Mr. Sapien to stay in touch with Mr. Cooper regarding hearing date. Witness Fred Quintana to be returned to facility previously housed so that he can meet with Mr. Sapien.

3:20pm Mr. Sapien responds.

3:21pm Court concludes hearing with Mr. Sapien.

3:21pm Court returns to Doc. 1744, nothing further from counsel.

3:22pm Court addresses counsel regarding Doc. 1859.

3:23pm Mr. Benjamin responds, agreement reached with United States.

3:23pm Court denies Doc. 1859.

3:25pm Mr. Castle addresses court regarding other witnesses – Luis Lopez client and C.J. Mchiney – client.

Court directs counsel to contact counsel to check availability for hearing.

3:26pm Court addresses Doc. 1861, nothing further from counsel.

3:27pm Court addresses counsel regarding Doc. 1061

3:28pm Mr. Burke, court has already addressed this motion 1061.

3:28pm Court addresses counsel with next motion Doc. 1671 B. Garcia motion to Exclude Testimony.

3:29pm Mr. Beck responds, gang expert still listed, however may not call at trial.

3:30pm Court addresses counsel.

3:31pm Mr. Castle responds.

3:33pm Court references previous rulings applicable to all trials.

3:34pm Mr. Burke responds.

3:35pm Court addresses counsel with Motion Doc. 1670.

3:35pm Mr. Castle indicates matter is moot.

3:35pm Court addresses Mr. Benjamin with Motion to Suppress Doc. 1142.

3:40pm Mr. Benjamin request matter be moved back so that accurate transcripts can be reviewed by US Attorney.

3:41pm Court agrees, moves to Motion in Limine Alleged Bad Acts by Billy Garcia Doc. 1308.

3:46pm Court addresses counsel regarding Bad Acts. Counsel to meet and confer.

3:50pm Mr. Solis addresses court regarding procedures for addressing the court with Bad Acts.

3:55pm Mr. Burke addresses court regarding Doc. 1504 Troup's Oppose Motion in Limine Regarding Alleged Bad Acts.

4:17pm Court in recess.

4:38pm Court in session.

4:38pm Mr. Burke addressee court regarding Troup's remaining bad acts that counsel cannot reach an agreement on.

4:40pm Counsel with to work the United States on reaching an agreement on Motion in Limine to Exclude Other Bad Acts Docs. 1528, 1531, 1602.

4:42pm Mr. Lahann addresses court regarding Patterson's Motion in Limine to Exclude Other Bad Acts Doc.1532.

4:46pm Mr. Beck responds.

4:53pm Court indicates on the record which Bad Acts are coming in.

4:55pm Mr. Solis addresses court regarding Motion regarding Mental Health Records.

4:57pm Matter to be taken up tomorrow re: Doc. 1908

4:58pm Mr. Castle addresses court, request proceeding on Motions to Suppress.

4:59pm Ms. Armijo responds, witness excused, Ms. Armijo needs to review transcript, will be ready tomorrow.

5:00pm Court will take up Motions to suppress tomorrow.

5:01pm Mr. Benjamin addresses court with Doc. 1318 Gallegos Motion to Dismiss for Preindictment Delay.

5:13pm Court addresses Mr. Benjamin.

5:14pm Ms. Torracco indicates defendant Gallegos joins in this motion.

5:14pm Mr. Beck responds.

5:24pm Mr. Beck moves to admit exhibits 1, 2, 3 and 4 related to Doc. 1318.

5:24pm Mr. Benjamin or other no other defense counsel have any objection to admission.

5:25pm Court admits exhibits 1-4 related to Doc. 1318.

5:25pm Mr. Beck continues with arguments related to Motion to Dismiss.

5:27pm Mr. Benjamin responds.

5:32pm Court denies motion at this time, may renew request at a later date.

5:32pm Court in recess.

DAY 4: 3/15/18

8:34am Court in session.

8:34am Mr. Benjamin moves to admit Exhibits A-1, A-2 – November 2012 interview of J. Gallegos.

8:35am Court admits Exhibits A-1, A-2 admitted without objections from counsel.

8:38am Court addresses counsel.

8:41am Ms. Armijo calls witness Richard Williamson, witness sworn.

8:42am Ms. Armijo conducts direct examination of witness Williamson.

Ms. Armijo moves Government's exhibits 1 and 2 for purposes of this hearing only.

8:49am Court admits exhibits 1 and 2 without objection from counsel.

8:49am Ms. Armijo continues with direct examination of witness Williamson.

8:53am Mr. Benjamin conducts cross examination of witness Williamson.

9:00am Ms. Armijo conducts re-direct examination of witness Williamson.

9:01am Court excuses witness Williamson.

9:01am Mr. Benjamin addresses court with arguments in support of motion

9:04am Ms. Armijo responds, request court deny motion to suppress.

9:07am Court addresses counsel, inclined to deny motion for reasons as stated on the record.

9:14am Mr. Cooper addresses court regarding motion Doc. 1292.

9:15am Mr. Beck responds.

9:20am Mr. Cooper calls witness Leonard Lujan, witness sworn.

9:21am Mr. Beck addresses Court regarding request for mental health records.

9:26am Mr. Cooper addresses Court regarding request for an order to NM Department of Corrections for mental health records for Leonard Lujan, Eugene Martinez and Lawrence Torres.

9:28am Mr. Beck responds.

9:31am Mr. Cooper requests 5 days for NM Dept of Corrections to produce records.

9:31am Court addresses counsel regarding proposed protective order.

9:34am Mr. Beck requests 10 days.

9:35am Mr. Cooper request 5 days for NM Dept of Corrections to provide records to the United States and 5 days to produce to defendant.

9:35am Mr. Solis addresses court regarding Doc. 1908, request for records, requests 5 days for records.

9:36am Mr. Clark addresses court regarding protective order request that document not be placed on defendant tablets.

9:37am Court directs that no mental health records be placed on tablets.

9:40am Court signs Order regarding mental health records Doc. 1908.

9:40am Mr. Cooper conducts direct examination of witness Leonard Lujan.

10:01am Court in recess.

10:19am Court in session.

10:19am Mr. Cooper continues with direct examination of witness Leonard Lujan.

11:15am Mr. Burke conducts direct examination of witness Leonard Lujan.

11:18am Mr. Solis conducts direct examination of witness Leonard Lujan.

11:27am Mr. Beck conducts cross examination of witness Leonard Lujan.

11:55am Mr. Cooper conducts re-direct examination of witness Leonard Lujan.

11:58am Mr. Cooper moves defendant Billy Garcia's exhibit S.

11:58am Defendant's exhibit S is admitted without objection by United States.

12:01pm Court in recess.

1:02pm Court in session.

1:07pm Mr. Solis conducts re-direct examination of witness Leonard Lujan.

1:10pm Court excuses witness Leonard Lujan.

1:11pm Mr. Castle moves to admit defense exhibits A-R by agreement, relative to Motion to dismiss. (A-Report from Peterson, B. Andrew Armijo, C-transcript of interview, D-email between NMSP and Rhodes, E-Report by C. Lackey, F-Report by R. Duncan, G-Report FBI 302 TFO Rosa, H-report from STG J. Moore, I-Report from L. Tafoya, J-Report L. Jaramillo, K-report T. Archuleta, L- Repot L Tafoya, M- from Norman Rhodes, N-Edgar Rosa, P-Report by Lance Roundy, Q-FBI 302 by Sonya Chavez, R-FBI 302 by Lane Roundy, T-Stipulation of testimony from AUSA Braun).

1:20pm Court admits exhibits.

1:20pm Mr. Cooper indicates witness Benjamin Clark testimony is relevant to Doc. 1909.

1:22pm Mr. Beck objects to testimony.

1:22pm Witness Benjamin Clark present with his attorney Stephen Hosford, witness sworn.

1:22pm Mr. Cooper conducts direct examination of witness Clark.

1:33pm Mr. Beck conducts cross examination of witness Clark.

1:35pm Court addresses Mr. Beck.

1:35pm Mr. Beck responds.

1:37pm Court excuses witness Mr. Clark.

1:38pm Mr. Castle calls witness Agent Trent Pedersen, witness sworn.

1:38pm Mr. Castle conducts direct examination of witness Pedersen.

2:28pm Mr. Beck conducts cross examination of witness Pedersen.

2:32pm Court in recess.

2:46pm Court in session.

2:46pm Mr. Beck continues with cross examination of witness Pedersen.

3:11pm Mr. Castle conducts re-direct examination of witness Pedersen.

3:22pm Mr. Beck conducts re-cross examination of witness Pedersen.

3:23pm Mr. Castle conducts re-direct examination of witness Pedersen.

3:25pm Court excuses witness Pedersen.

3:46pm Bench conducts conference with all counsel.

3:47pm Mr. Castle calls witness Dwayne Santistevan, witness sworn.

3:47pm Mr. Castle conducts direct examination of witness Santistevan.

3:55pm Mr. Beck conducts cross examination of witness Santistevan.

3:57pm Mr. Castle conducts re-direct examination of witness Santistevan.

3:58pm Mr. Grandberg conducts direct examination of witness Santistevan.

3:59pm Court excuses witness Santistevan.

3:59pm Mr. Beck calls witness James Pedraza, witness sworn.

3:59pm Mr. Beck conducts direct examination of witness Pedraza.

4:07pm Mr. Benjamin conducts direct examination of witness Pedraza.

4:08pm Mr. Castle conducts re-direct examination of witness Pedraza.

4:12pm Court excuses witness Pedraza.

4:13pm Court indicates counsel will be appointed for James Garcia, packet to be put to together

4:15pm Court in recess.

4:28pm Court in session.

4:28pm Court addresses counsel, attorney Cody Rogers to be present for James Garcia.

4:28AM Mr. Castle calls witness Lawrence Tafoya, witness sworn.

4:28pm Mr. Castle conducts direct examination of witness Tafoya.

4:36pm Mr. Solis has no questions of witness Tafoya.

4:38pm Mr. Beck conducts cross examination of witness Tafoya.

4:42pm Mr. Beck moves to admit exhibit 1 for Billy Garcia's Motion to Dismiss [Doc. 1283].

4:42pm Court admits government exhibit 1 for Billy Garcia's Motion to Dismiss [Doc. 1283], no objection by defendants.

4:42pm Mr. Beck continues with cross examination of witness Tafoya.

4:45pm Mr. Castle conducts re-direct examination of witness Tafoya.
4:54pm Mr. Solis conducts direct examination of witness Tafoya.
5:04pm Court excuses witness Tafoya.
5:04pm Mr. Castle indicates Ms. Rogers needs a few minutes with James Garcia.
5:06pm Mr. Benjamin addresses court on Doc. 1319 – Bill of Particulars, has two requests after meeting and conferring with government.
5:09pm Ms. Armijo responds.
5:10pm Court addresses Ms. Armijo and Mr. Benjamin. Court will not require any amendment of the pleadings. Court denies motion Doc. 1319
5:18pm Mr. Burke addresses court regarding bifurcation/severance.
5:18pm Mr. Castle addresses court with to proposed orders reference phone calls from facilities.
5:19pm Mr. Beck responds.
5:20pm Court will enter
5:23pm Ms. Harbour addresses court regarding statements from first trial.
5:25pm Court addresses Ms. Rogers.
5:25pm Mr. Castle calls witness James Garcia, witness present with Ms. Rogers, witness sworn.
5:27pm Mr. Castle conducts direct examination of witness Garcia.
5:30pm Mr. Beck conducts cross examination of witness Garcia.
5:49pm Court in recess.

DAY 5 3/16/18

8:30am Court in session.
8:31am Court addresses witness James Garcia, reminds witness he is under oath.
8:31am Mr. Beck moves to admit government exhibit 2.
8:33am Court admits government's exhibit 2, no objections by defendants.
8:33am Mr. Beck continues with cross examination of witness James Garcia.
8:36am Mr. Beck to supplement exhibit 2, with 2A a recording.
8:36am Mr. Burke objects.
8:37am Mr. Castle joins Mr. Burke's objections.
8:38am Mr. Beck responds.
8:38am Court admits 2A for purposes of this hearing only.
8:38am Mr. Beck continues with cross examination of witness Garcia.
8:44am Mr. Beck moves to admit government exhibit 3, plea agreement of Javier Alonzo.
8:44am Mr. Burke objects.
8:44am Court admits government exhibit 3.

8:49am Mr. Beck moves to government admit exhibit 4 – FBI 302.
Mr. Burke has same objection.

8:49am Court admits government exhibit 4.

8:49am Mr. Beck continues with cross examination of witness Garcia.

8:49am Mr. Beck moves to admit government's exhibits 5 and 6. Exhibit 5 will be Edward Troup's offender physical location Exhibit 6 is James Garcia's offender physical location.

9:13am Bench conference with all counsel.

9:13am Court admits government's exhibits 5 and 6 with no objections by defendants.

9:13am Mr. Beck continues with cross examination of witness Garcia.

9:17am Mr. Beck moves to admit government's exhibit 7 – FBI 302.

9:17am Mr. Burke objects.

9:18am Court addresses Mr. Beck, exhibits are being offered in lieu of further testimony.

9:18am Mr. Beck moves to admit government's exhibit 8 – FBI 302.

9:19am Court admits government exhibits 7 and 8 for purposes of this hearing.
Mr. Beck moves to admit government's exhibit 2c (unredacted copy of transcript), sealed.

9:21am Court admits government's 2c under seal.

9:22am Mr. Beck moves to admit government's exhibit 9 under seal PSR James Garcia, unredacted.

9:22am Court admits government's 9 under seal without objection.

9:22am Mr. Castle addresses court regarding PSRs available to defense.

9:23am Mr. Beck will try to get PSRs to defendants.

9:23am Mr, Castle to prepare chart for court's review on statements.
Mr. Beck clarifies exhibits 2, 2a, b and c for the court

9:27am Court excuses Fred Garcia.

9:30am Mr. Castle will proceed to call witnesses Jim Moore and Cheryl Lackey telephonically.

9:32am Mr. Grandberg addresses court wishes to take up Mr. Chavez's bad acts motion. Doc. 1531.

9:35am Mr. Grandberg addresses court.

9:44am Ms. Armijo responds.

9:45am Court addresses counsel regarding Bad Acts statements, evidence will be allowed as indicated on the record.

9:56am Court in recess.

10:11am Court in session.

10:17am Mr. Cooper proceeds with direct examination of witness Jim Moore telephonically, witness sworn.

10:38am Mr. Beck conducts cross examination of witness Jim Moore.

10:48am Mr. Cooper conducts re-direct of witness Moore.

10:50am Mr. Grandberg conducts direct examination of witness Moore.

10:51am Court excuses witness Moore.

10:51am Mr. Castle calls witness Cheryl Moore (Lackey) telephonically, witness sworn.

10:53am Mr. Beck addresses court regarding identification of statements for this witness.

10:53am Mr. Castle conducts direct examination of witness C. Moore.

10:59am Reference 1909 statements.

11:02am Mr. Castle addresses court regarding Doc. 1308 – Billy Garcia Bad Acts

11:04am Mr. Castle calls witness Frederico Munoz, represented by Luis Lopez, witness sworn.

11:08am Mr. Burke conducts direct examination of witness Munoz.

11:10am Ms. Armijo conducts cross examination of witness Munoz.

11:13am Mr. Castle conducts re-direct examination of witness Munoz.

11:17am Court excuses witness Munoz and his attorney.

11:18am Mr. Cooper calls witness Robert Martinez- related to Doc. 1909 – regarding statements.

11:21am Ms. Armijo objects, have not received any documents related to this witnesses testimony.

11:22am Mr. Cooper withdraws request to call witness Robert Martinez.

11:22am Court excuses attorney Charles McElhinney from courtroom (witness Robert Martinez not present).

11:23am Mr. Beck addresses court regarding Doc. 1909 related to exhibit 5 and 6.

11:24am Mr. Castle addresses court regarding redacting transcript of Leroy Lucero.

11:27am Mr. Burke addresses court, next witnesses NM State Police officers - Felipe Gonzalez and Norman Rhoades.

11:31am Mr. Burke calls witness Norman Rhoades, witness sworn.

11:31am Mr. Burke conducts direct examination of witness Rhoades.

11:47am Court in recess.

12:05pm Court in session.

12:06pm Mr. Castle continues with direct examination of witness Rhoades.

12:08pm Mr. Solis conducts direct examination of witness Rhoades.

12:10pm Mr. Beck conducts cross examination of witness Rhoades.

12:24pm Court excuses witness Rhoades.

12:24pm Mr. Burke calls witness Felipe Gonzalez, witness sworn.

12:26pm Mr. Burke conducts direct examination of witness Gonzalez.

12:31pm Mr. Burke moves to admit defendant's exhibit U.

12:32pm Court admits exhibit U into evidence without objection by defendants.

12:32pm Mr. Burke continues with direct examination of witness Gonzalez.

12:32pm Mr. Solis conducts direct examination of witness Gonzalez.

12:37pm Mr. Beck conducts re-cross examination of witness Gonzalez.

12:43pm Court excuses witness Gonzalez.

12:43pm Mr. Castle calls witness Leroy Lucero present with his attorney Greg Fallick.

12:45pm Mr. Fallick addresses court regarding redactions on transcript.

12:46pm Mr. Castle responds, has no objections.

12:46pm Mr. Beck addresses court regarding what this witness is being offered for.

12:46pm Court excuses witness Leroy Lucero from courtroom.

12:47pm Mr. Castle addresses court regarding proposed proffer.

12:49pm Mr. Castle calls witness Leroy Lucero, witness sworn.

12:51pm Mr. Fallick addresses Court regarding Leroy Lucero testimony.

12:51pm Mr. Castle responds. Request a 104 hearing after he is given immunity.

12:52pm Mr. Benjamin concurs and joins in request.

12:52pm Mr. Castle conducts direct examination of witness Leroy Lucero.

12:53pm Mr. Beck requests Mr. Fallick continue as counsel Leroy Lucero.

12:53pm Court requests Mr. Fallick continue as counsel for Leroy Lucero.

12:53pm Court excuses Leroy Lucero and his attorney.

12:55pm Mr. Castle calls witness Agent Acee, witness sworn.

12:55pm Mr. Castle conducts direct examination of witness Agent Acee.

1:31pm Court in recess.

2:37pm Court in session.

2:37pm Mr. Castle continues with direct examination of witness Agent Acee.

4:02pm Court addresses counsel. Offers portions of opinion, not finalized, can be attached to clerk's minutes as exhibits. Court indicates JERS will be utilized in this trial.

4:05pm Court in recess.

4:22pm Court in session.

4:23pm Court addresses counsel regarding un-finalized James Chart which will be court's exhibit 1 to clerk's minutes.

4:25pm Ms. Harbour-Valdez addresses court regarding counsels' request for judge's focus.

Future hearing dates and location/seating chart for trial. Defense counsel request court focus on Motion to Bifurcate, filed today and the motion that was filed earlier this week regarding the configuration of courtroom.

- 4:26pm Court addresses counsel regarding chart, James statements, motions to dismiss, trial location, future hearing dates.
- 4:40pm Ms. Harbour-Valdez addresses Court regarding new dolly of information coming from Agent Acee.
- 4:40pm Ms. Torracco addresses court regarding new dolly of information from Agent Acee and severance request.
- 4:44pm Mr. Castle addresses court regarding bifurcation and severance.
- 4:44pm
- 4:45pm Court will be entering opinion shortly on jurisdictional issues.
- 4:46pm Ms. Armijo addresses court and counsel regarding new dolly of information, clarifies that it is not new, it is evidence related to Burns murder.
- 4:57pm Mr. Beck addresses court.
- 5:01pm Mr. Castle continues with direct examination of witness Agent Acee. Moves to admit exhibits W, X, Y, and Z by stipulation.
- 5:02pm Court admits exhibits W, X, Y, and Z.
- 5:03pm Mr. Burke conducts direct examination of witness Agent Acee.
- 5:08pm Mr. Beck conducts cross examination of witness Agent Acee. Moves to admit Mr. Lujan's transcripts to 8/8/07 and 9/12/07 as gov'ts exhibits 19 and 20.
- 5:19pm Mr. Burke addresses court with regard to exhibit V, counsel agree it is admitted.
- 5:16pm Court will convene ex parte related to CJA matters with defense counsel and defendants.
- 5:30pm Court in recess.